

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

PHILLIP A. COVARRUBIAS,

Petitioner,

vs.

STATE OF NEVADA, et al.,

Respondents.

Case No. 2:14-cv-01200-GMN-PAL

ORDER

Petitioner has submitted an application to proceed in forma pauperis (#3) and a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 (#1). The court denies the application (#3) because petitioner has paid the filing fee. The court has reviewed the petition. The court will refer the petition to the court of appeals because it is a second or successive petition.

Petitioner challenges the validity of his judgment of conviction in State v. Covarrubias, Case No. 03C190643, in the Eighth Judicial District Court of the State of Nevada. Petitioner was convicted of one count of attempted sexual assault and one count of child abuse and neglect with substantial mental harm. Petitioner challenged the same judgment of conviction in Covarrubias v. Palmer, Case No. 3:07-cv-00120-LRH-RAM. In that action, this court denied the habeas corpus petition on the merits and denied a certificate of appealability. Petitioner appealed the denial. The Court of Appeals for the Ninth Circuit denied a certificate of appealability.

The petition in this action is a second or successive petition as defined in 28 U.S.C. § 2244(b). Petitioner must first obtain authorization from the court of appeals before this court can consider his petition. 28 U.S.C. § 2244(b)(3). Petitioner has applied for authorization before in the court of appeals, Covarrubias v. Legrand, Case No. 12-72763. The court of appeals denied the application.

Petitioner has submitted a motion for appointment of counsel (#4). The court denies the motion because the court is referring the action to the court of appeals.

1 **IT IS THEREFORE ORDERED** that the application to proceed in forma pauperis (#3) is
2 **DENIED** as moot.

3 **IT IS FURTHER ORDERED** that the motion for appointment of counsel (#4) is
4 **DENIED**.

5 **IT IS FURTHER ORDERED** that the clerk shall add Catherine Cortez Masto, Attorney
6 General for the State of Nevada, as counsel for respondents.

7 **IT IS FURTHER ORDERED** that the clerk shall electronically serve respondents with a
8 copy of the petition (#1) and a copy of this order. No response by respondents is necessary.

9 **IT IS FURTHER ORDERED** that, pursuant to Circuit Rule 22-3(a), the clerk of the court
10 shall refer this action to the United States Court of Appeals for the Ninth Circuit.

11 **IT IS FURTHER ORDERED** that the clerk of the court shall administratively close this
12 action.

13 **DATED** this 20th day of October, 2014.

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Gloria M. Navarro, Chief Judge
United States District Court
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